Food Drivers, Helpers & Warehousemen Employees, Local 500 a/w International Brotherhood of Teamsters, AFL–CIO *and* Acme Markets, Inc.
Case 4–CB–8863

September 19, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On December 2, 2002, Administrative Law Judge Paul Bogas issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Party filed answering briefs in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Food Drivers, Helpers & Warehousemen Employees, Local 500 a/w International Brotherhood of Teamsters, AFL–CIO, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"1(b) In any like or related manner acting in derogation of its statutory duty to bargain with Acme Markets, Inc. on behalf of bargaining unit employees."

2. Substitute the attached notice for that of the administrative law judge.

[1] We find that the Respondent's contention that this matter should be deferred to the parties' contractual grievance/arbitration procedures was untimely. The Respondent did not request deferral either in its answer to the complaint or in the joint stipulated record to the judge, but raised it for the first time in its poststipulation brief to the judge. The request therefore was untimely raised. *Resco Products*, 331 NLRB 1546, 1547 (2000); *Cullen Supermarket*, 220 NLRB 507, 509 fn. 19 (1975).

[2] Chairman Battista notes that no party makes the argument that the "most-favored nations" clause is nonmandatory or unlawful. See *Dolly Madison Industries*, 182 NLRB 1037 (1970), distinguishing *Mine Workers v. Pennington*, 381 U.S. 657 (1965).

[3] We shall modify par. 1(b) of the judge's recommended Order to conform to the nature of the violation in this case. We shall also substitute a new notice in accordance with our decision in *Ishikawa Gasket America, Inc.*, 337 NLRB No. 29 (2001).

Dated, Washington, D.C. September 19, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to furnish Acme Markets, Inc. (the Employer) with the information requested in the Employer's January 22, 2002 letter to us.

WE WILL NOT in any like or related manner act in derogation of our statutory duty to bargain with Acme Markets, Inc. on behalf of our members.

WE WILL furnish the Employer the information requested in the Employer's January 22, 2002 letter to us.

FOOD DRIVERS, HELPERS & WAREHOUSEMEN EMPLOYEES, LOCAL 500 A/W INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO

Anne C. Ritterspach, Esq., for the General Counsel.
Robert C. Cohen, Esq. (Atkins & Cohen), of Philadelphia, Pennsylvania, for the Respondent.
William J. Flannery, Esq. (Morgan Lewis & Bockius), of Harrisburg, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

PAUL BOGAS, Administrative Law Judge. Acme Markets, Inc. (the Employer or the Charging Party) filed the charge in this case on May 6, 2002, and the Regional Director for Region 4 of the National Labor Relations Board (the Board) issued the complaint on July 29, 2002. The complaint alleges that Food Drivers, Helpers & Warehousemen Employees, Local 500 a/w International Brotherhood of Teamsters, AFL–CIO (the Union or Respondent) violated Section 8(b)(3) of the National Labor Relations Act (the Act) by failing and refusing to furnish information requested by the Employer that was relevant to the administration of the collective-bargaining agreement (CBA or Agreement) between the Union and the Employer. The Respondent filed a timely answer in which it denied that it had violated the Act. Before the scheduled hearing in this case commenced, the parties jointly waived a hearing and agreed to have the case decided on the basis of a stipulated record.

Based on the stipulated record submitted by the parties, and after considering the briefs, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. JURISDICTION

The Employer, a corporation with a warehouse in Denver, Pennsylvania, is engaged in the retail sale and distribution of food and food products. In conducting its business operations the Employer annually receives gross revenues in excess of $500,000 and sells and ships goods valued in excess of $50,000 directly to points outside the Commonwealth of Pennsylvania. The Respondent admits, and I find, that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Stipulated Facts

The Respondent is the exclusive collective-bargaining representative for a bargaining unit comprised of the truckdrivers, helpers, checkers, forklift drivers, loaders, platform persons, and jockeys working at the Respondent's warehouse in Denver, Pennsylvania. At all times relevant to the complaint, the Employer and the Respondent have been parties to a collective-bargaining agreement (Agreement). The Agreement went into effect on July 3, 1997, and was originally set to expire on July 1, 2001, but before the expiration of the Agreement the parties entered into a Memorandum of Agreement (MOA) that extended the Agreement's term through June 30, 2006.[1] The Agreement contains a "most-favored nations" clause, which states:

> Union will not enter into any Agreement or have any understanding with any carrier of any type which gives to such carrier any better terms as to wages, hours or working conditions than those expressed in this Agreement.

Agreement, article 28, section 1.[2]

By letter dated January 22, 2002, the Employer requested information from the Respondent. The letter referenced the "most-favored nations" clause in the Agreement and requested copies of: all current collective-bargaining agreements to which the Respondent was a party; all rules and policies that the Respondent negotiated with other employers or allowed other employers to implement; and, all arbitration decisions and grievance settlement agreements issued since July 3, 1997, that involved the interpretation of the language of the collective-bargaining agreement.[3] The Respondent has not provided the Employer with any of the information requested in the January 22 letter. The parties stipulate that the Employer has a basis for believing that the Respondent possesses information responsive to the information request.

During the time period at issue here the parties have been exchanging drafts of a successor to the Agreement, but no successor Agreement had been signed as of the time that the parties submitted the stipulated record.

[1] The MOA was entered into on October 1, 1999.

[2] The MOA made some modifications to the terms of the Agreement, but this provision was not affected.

[3] The relevant portion of the Employer's January 22, 2002 information request reads as follows:

> In order to facilitate the administration of the contract, and consistent with the terms of the National Labor Relations Act, as amended, please provide the Company with the following information:
>
> 1. Copies of all current collective bargaining agreements to which Local 500 is a party. Such agreements include any expired agreements that the Union has agreed to extend. If the contract makes reference to any benefit programs which are not spelled out in detail in the contract (e.g.: insurance policies, health and welfare programs, pension benefits) please provide a copy of the summary plan description for such programs. Moreover, the response should also include all side letter agreements or understandings that may or may not be attached to the contract under which they arise.
>
> 2. Copies of all rules and/or policies currently in effect at workplaces covered by a [Respondent] contract that the [Respondent] has negotiated with the employer or has agreed to allow the employer to put into effect. Such rules and policies include, but are not limited to, rules/policies covering discipline, discharge, rules of conduct, work rules and rules/policies governing attendance and absenteeism.
>
> 3. Copies of any and all arbitration decisions and/or grievance settlement agreements issued in connection with any collective bargaining agreement to which Local 500 is a party and which have been issued since July 3, 1997. This request includes arbitration decisions/grievance settlement agreements that involve the interpretation of the language of the collective bargaining agreement including, but not limited to, compensation and benefit obligations provided for under the contract, as well as decisions/settlement agreements which address the legality and/or enforceability of rules/policies governing discipline, discharge, rules of conduct, work rules and policies/rules governing attendance and absenteeism.

B. The Complaint

The complaint alleges that the Respondent has failed and refused to furnish information requested by the Employer that was relevant to the administration of the Agreement, and has by this conduct failed and refused to bargain collectively with the Employer, and violated Section 8(b)(3) of the Act.

III. ANALYSIS AND DISCUSSION

A labor organization's duty to furnish information pursuant to Section 8(b)(3) of the Act is "commensurate with and parallel to an employer's obligation to furnish it to a union" pursuant to Section 8(a)(1) and (5) of the Act. *Iron Workers Local 207 (Steel Erecting Contractors)*, 319 NLRB 87, 90 (1995); see also *Firemen & Oilers Local 288 (Diversy Wyandotte)*, 302 NLRB 1008, 1009 (1991). The duty to provide information applies to information relevant to the policing or administration of a collective-bargaining agreement. *Washington Beef, Inc.*, 328 NLRB 612, 617–618 (1999); *Bacardi Corp.*, 296 NLRB 1220, 1222–1223 (1989); *Chesapeake & Potomac Telephone Co.*, 259 NLRB 225, 227 fn. 7 (1981), enfd. 687 F.2d 633 (2d Cir. 1982). Relevance is evaluated using a "liberal discovery-type standard" that is satisfied as long as the information has some bearing upon an issue between the parties and is of probable use to the requesting party. *Bacardi Corp.*, supra; *Pfizer, Inc.*, 268 NLRB 916, 918 (1984), enfd. 763 F.2d 887 (7th Cir. 1985).

I conclude that the information requested in the Employer's January 22, 2002 letter is necessary and relevant to the policing and administration of "most-favored nations" clause in the Agreeement. "The Board has consistently held that such a 'most favored nations' clause establishes both the necessity and relevancy of" information regarding agreements that a union has with other employers, "and that a union's refusal to furnish such information violates Section 8(b)(3) of the Act." *Electrical Workers Local 292 (Sound Employers Assn.)*, 317 NLRB 275 275–276 (1995), citing *Teamsters Local 272 (Metropolitan Garage)*, 308 NLRB 1132, 1133–1134 (1992); *Service Employees Local 144 (Jamaica Hospital)*, 297 NLRB 1001, 1002–1003 (1990), *Electrical Workers Local 1186 (Pacific Electrical Contractors)*, 264 NLRB 712, 721–722 (1982); and *Hotel & Restaurant Employees Local 355 (Doral Beach Hotel)*, 245 NLRB 774, 776–777 (1979); see also *Service Employees Local 144 (Jamaica Hospital)*, supra at fn. 2, 1003 (1990).

It is undisputed that the Respondent refused to provide any of the relevant information requested by the Employer in its January 22, 2002 letter. In its brief, the Respondent argues that information sought is not relevant because it involves employees who are not in the bargaining unit and because the Employer has not filed a grievance based on the "most-favored nations" clause. These arguments do not overcome the clear precedent of cases such as *Sound Employers Assn.*, supra, and *Jamaica Hospital*, supra, which the Respondent does not even mention, much less distinguish. Those cases make clear that a request for information about agreements with other employers is presumptively relevant to the administration of a "most-favored nations" clause in a collective-bargaining agreement regardless of the fact that such a request seeks information about the terms of employment of employees who are not in the bargaining unit, and regardless of whether the employer has filed grievance. In its answer to the complaint the Respondent contends that it is not required to supply the requested information because the parties have reached a successor agreement that the Employer refuses to sign. As a factual matter this contention is not established by the stipulated record in this case. On that basis alone, the Respondent's argument must be rejected. Moreover, even if the record did support the Respondent's factual allegation, the Respondent has cited no authority or theory under which that would excuse it of the clear obligation to provide information necessary and relevant to the policing and administration of a "most-favored nations" provision that the parties agree has been in effect at all relevant times. The Respondent contends that the request for information is overly burdensome. The Respondent has made no showing that the number of agreements or the manner in which the information is maintained make production impractical. Therefore, I decline to find that the request is unduly burdensome. See *Service Employees Local 144*, supra at 1001 fn. 2.

I conclude that the Employer is entitled to the information requested in its January 22, 2002 letter and that the Respondent's failure to supply such information is a violation of Section 8(b)(3) of the Act.

CONCLUSIONS OF LAW

1. The Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. At all times material to this case, the Respondent and the Employer have been parties to a collective-bargaining agreement.
4. By refusing to furnish the Employer with the information requested in the Employer's letter dated January 22, 2002, the Respondent has violated Section 8(b)(3) of the Act.

REMEDY

The Respondent has committed an unfair labor practice within the meaning of Section 8(b)(3) of the Act, and must be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the purpose and policies of the Act. Specifically, the Respondent must be ordered to provide the Employer with all of the information requested in the Employer's January 22, 2002 letter.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Food Drivers, Helpers & Warehousemen Employees, Local 500 a/w International Brotherhood of Teamsters, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Refusing to furnish Acme Markets, Inc. (the Employer) with the information requested in the Employer's January 22, 2002 letter to the Respondent, described above.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Immediately furnish the Employer with the information requested in the Employer's January 22, 2002 letter to the Respondent.

(b) Within 14 days after service by the Region, post at its business office and meeting places copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 4 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by the Employer, if willing, at all places where notices to employees are customarily posted.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., December 2, 2002.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

WE WILL NOT refuse to furnish Acme Markets, Inc. (the Employer) with the information requested in the Employer's January 22, 2002 letter to us.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Employer with the information requested in the Employer's January 22, 2002 letter to us.

FOOD DRIVERS, HELPERS & WAREHOUSEMEN EMPLOYEES, LOCAL 500 A/W INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO